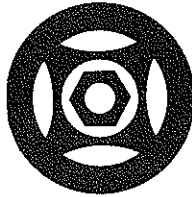


**Little Rock  
Wastewater  
Utility**



11 Clearwater Drive  
Little Rock, Arkansas 72204  
501/376-2903  
Fax: 501/688-1409 or 501/688-1463

January 19, 2006

Water Docket  
U.S. Environmental Protection Agency  
Mailcode 4101T  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

**Attn: Docket Id No. EPA-HQ-OW-2005-0523**  
**Proposed Policy on Wastewater Blending**

Dear Sir or Madam:

The Little Rock Wastewater Utility (LRWU) submits these comments pertaining to EPA's proposed blending policy. This proposal, in contrast to EPA's prior proposal, the bypass regulatory history, and EPA's historical interpretation now somehow declares all blending to be an illegal bypass subject to the § 122.41(m) criteria including the "no feasible alternatives" standard. Such a drastic change in EPA position, which has not at any time been communicated to the regulated community, must be undertaken through rulemaking. EPA's purported attempt to amend its rule through this policy is violative of the Administrative Procedures Act.

Notwithstanding the above concerns, if EPA is to address this matter through a policy then, at a minimum, the policy should be modified to address some crucial issues.

**Judicial Settlement Should Not Be Preempted**

The proposed policy would now require a utility analysis and implementation of feasible alternatives to minimize or eliminate blending. LRWU had been subject to a Clean Water Act lawsuit in federal district court. The suit resulted in a settlement and in LRWU agreeing to undertake certain long-term planning to address its wet weather wastewater needs. Not only was the settlement approved and entered in federal district court in *Sierra Club v. City of Little Rock, et al.*, No. 4:00CV022JMM (E.D. AR., order filed 2001), but the U.S. government in its November 2, 2001 letter to the court stated that "the U.S. believes that overall the proposed settlement furthers the purposes of the Clean Water Act and is consistent with the law and the public interest."

LRWU is undertaking an extensive construction project. Among other things, a 14 million gallon primary effluent diversion basin will be constructed. This equalization

basin (EQ) will be capable of holding 10 hours of secondary diversion flow, once the improvements are completed. Blending will occasionally occur beyond this plant capacity improvement.

There has been no change in law or regulation since the entry of the settlement in federal court. POTWs that have judicial consent decrees that address the municipality's wet weather needs should not now be subject to these new requirements. As such, the proposed policy should specifically exempt such municipalities.

### **Grand-Fathering of Existing Operations**

EPA's approach of declaring through policy that the bypass regulation applies to all blending activities has the potential effect of deeming past blending activities to also have been bypasses. Notwithstanding our disagreement as to whether blending can be a bypass, at a minimum it is incumbent upon EPA to identify that such interpretation only applies prospectively. Furthermore, EPA should provide that such interpretation does not apply until the NPDES permit is reissued to the municipality and, as such, provides the municipality the opportunity to have the blending activities approved in the permit pursuant to the provisions of the policy. This would provide for existing facilities subject to the policy to undertake the utility analysis and to identify and implement feasible alternatives. The policy should not automatically deem every POTW that blends to be an illegal bypass without providing an opportunity to evaluate the conditions and to comply, as necessary.

### **If Anything Water Quality Standards Should be Promulgated**

The draft blending policy indicates that the agency and stakeholders are concerned that wet weather flow diversions could have adverse environmental or public health impacts due to the higher expected pollutant load of diverted flows with specific reference to pathogens. EPA has historically required water quality standards as necessary to protect human health and the environment. EPA recently determined under the Beaches Environmental Assessment and Coast Health (BEACH) Act of 2000 that existing water quality standards are fully protective. EPA's assertion in the blending policy is unsupported in the record. Moreover, if EPA's assertion were correct, then it would be incumbent upon EPA to assure that appropriate water quality standards are promulgated. EPA cannot appropriately assert that water quality standards are fully protective under its standards program and then assert that for the purposes of blending the standards are not protective. If action is required, then it is in the standards program, not by declaring blending to be a bypass.

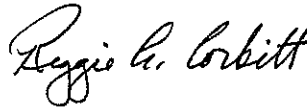
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**Non-Contact Body Recreation**

EPA's above assertion regarding potential adverse environmental or public health impacts due to the higher expected pollutant load of diverted flows would only require action in those instances where contact body recreation occurs in the receiving water while blending. In LRWU's situation, if blending were to occur after the improvements, it would only be expected to occur during the months of **October to March**, which are non-body contact recreational periods (due to cold water temperatures). It is inappropriate for the policy to assume that contact body recreation is always occurring when a municipality is blending and that, therefore, additional protection is required. At a minimum, the blending policy should not apply when blending only occurs during time periods in which contact body recreation is absent.

We appreciate your attention to these comments.

Sincerely,

A handwritten signature in cursive script that reads "Reggie A. Corbitt".

Reggie A. Corbitt, P.E., C.E.O.

RAC/bc